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PATENT

Docket No. YOR920000803US1

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Bantz et al.

Serial No. 09/788,071

Filed: February 16, 2001

For: Apparatus and Methods for  
Active Avoidance of Objectionable  
Content§  
§  
§  
§  
§  
§  
§

Group Art Unit: 2134

Examiner: Michael J. Simitoski

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

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PATENT TRADEMARK OFFICE  
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Alexandria, VA 22313-1450, facsimile number (571) 273-8300  
on September 8, 2006.

By:

  
Stephanie FeyAPPEAL BRIEF (37 C.F.R. 41.37)

This brief is in furtherance of the Notice of Reinstatement of Appeal, filed in this case on July 28, 2006.

No fees are believed to be required. If, however, any fees are required, I authorize the Commissioner to charge these fees which may be required to IBM Corporation Deposit Account No. 50-0510. No extension of time is believed to be necessary. If, however, an extension of time is required, the extension is requested, and I authorize the Commissioner to charge any fees for this extension to IBM Corporation Deposit Account No. 50-0510.

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Bantz et al. - 09/788,071

**REAL PARTY IN INTEREST**

The real party in interest in this appeal is the following party: International Business  
Machines Corporation

**RELATED APPEALS AND INTERFERENCES**

With respect to other appeals or interferences that will directly affect, or be directly affected by, or have a bearing on the Board's decision in the pending appeal, there are no such appeals or interferences.

**STATUS OF CLAIMS**

**A. TOTAL NUMBER OF CLAIMS IN APPLICATION**

Claims in the application are: 1, 3-6, 10, 11, 16, 17, 19-22, 26, 27, 32, 33, 35-38, 42, 43, and 48.

**B. STATUS OF ALL THE CLAIMS IN APPLICATION**

1. Claims canceled: 2, 7-9, 12-15, 18, 23-25, 28-31, 34, 39-41, and 44-47.
2. Claims withdrawn from consideration but not canceled: NONE.
3. Claims pending: 1, 3-6, 10, 11, 16, 17, 19-22, 26, 27, 32, 33, 35-38, 42, 43, and 48.
4. Claims allowed: NONE.
5. Claims rejected: 1, 3-6, 10, 11, 16, 17, 19-22, 26, 27, 32, 33, 35-38, 42, 43, and 48.
4. Claims objected to: NONE.

**C. CLAIMS ON APPEAL**

The claims on appeal are: 1, 3-6, 10, 11, 16, 17, 19-22, 26, 27, 32, 33, 35-38, 42, 43, and 48.

**STATUS OF AMENDMENTS**

There are no amendments after the final rejection of July 12, 2006.

### **SUMMARY OF CLAIMED SUBJECT MATTER**

#### ***Independent claim 1:***

The presently claimed invention provides a method of identifying objectionable content. The present invention retrieves requested content. (See specification, page 9, line 8, to page 10, line 21, and page 14, line 14.) The present invention retrieves a user profile for a requesting user. The user profile includes parameters for identifying objectionable content and a plurality of thresholds including a threshold for each of a plurality of categories of objectionable content. (See specification, page 11, line 15, to page 12, line 7, and page 14, lines 14-15.) The present invention analyzes the requested content using the parameters stored in the user profile of the requesting user to identify an amount of objectionable content based on the parameters for each of the plurality of categories of objectionable content. (See specification, page 10, line 20, to page 12, line 29.) The present invention determines a score for the requested content for each of the plurality of categories of objectionable content based on the amount and category of objectionable content contained in the requested content. (See specification, page 12, lines 8-29, and page 14, line 15.) The present invention stores the requested content in an objectionable content data structure if a score for the requested content is above at least one threshold for at least one category of objectionable content. (See specification, page 13, lines 1-24, and page 14, lines 17-19.)

#### ***Independent claim 17:***

The presently claimed invention provides an apparatus for identifying objectionable content. The apparatus may be an objectionable content avoidance service provider 106, which may be implemented as a proxy server in a client 104 or a server 108-112. The apparatus comprises a first interface, which retrieves requested content. (See specification, page 9, line 8, to page 10, line 21, and page 14, line 14.) The apparatus comprises a user profile for a requesting user. The user profile includes parameters for identifying objectionable content and a plurality of thresholds including a threshold for each of a plurality of categories of objectionable

content. (See specification, page 11, line 15, to page 12, line 7, and page 14, lines 14-15.) The apparatus comprises a processor which analyzes the requested content using the parameters stored in the user profile of the requesting user to identify an amount of objectionable content based on the parameters for each of the plurality of categories of objectionable content. (See specification, page 10, line 20, to page 12, line 29.) The processor determines a score for the requested content for each of the plurality of categories of objectionable content based on the amount and category of objectionable content contained in the requested content. (See specification, page 12, lines 8-29, and page 14, line 15.) The apparatus comprises a storage device, which stores the requested content in an objectionable content data structure if a score for the requested content is above at least one threshold for at least one category of objectionable content. (See specification, page 13, lines 1-24, and page 14, lines 17-19.)

***Independent claim 33:***

The presently claimed invention provides a computer program product for identifying objectionable content. The present invention retrieves requested content. (See specification, page 9, line 8, to page 10, line 21, and page 14, line 14.) The present invention retrieves a user profile for a requesting user. The user profile includes parameters for identifying objectionable content and a plurality of thresholds including a threshold for each of a plurality of categories of objectionable content. (See specification, page 11, line 15, to page 12, line 7, and page 14, lines 14-15.) The present invention analyzes the requested content using the parameters stored in the user profile of the requesting user to identify an amount of objectionable content based on the parameters for each of the plurality of categories of objectionable content. (See specification, page 10, line 20, to page 12, line 29.) The present invention determines a score for the requested content for each of the plurality of categories of objectionable content based on the amount and category of objectionable content contained in the requested content. (See specification, page 12, lines 8-29, and page 14, line 15.) The present invention stores the requested content in an objectionable content data structure if a score for the requested content is above at least one threshold for at least one category of objectionable content. (See specification, page 13, lines 1-

24, and page 14, lines 17-19.) The computer instructions embodied on a computer readable medium are as described with reference to Figure 5 in the description at page 14, lines 10-20.

***Dependent claims 4, 20, and 36:***

The presently claimed invention provides a proxy server. (See specification, page 6, lines 1-16)



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**GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

**A. GROUND OF REJECTION (Claims 1, 3, 5, 6, 10, 11, 16, 17, 19, 21, 22, 26, 27, 32, 33, 35, 37, 38, 42, 43, and 48)**

Whether claims 1, 3, 5, 6, 10, 11, 16, 17, 19, 21, 22, 26, 27, 32, 33, 35, 37, 38, 42, 43, and 48 are unpatentable over Hoffberg (U.S. Patent No. 6,850,252 B1), Palmer (U.S. Patent No. 5,195,135), and Kirsch et al. (U.S. Patent No. 6,772,196 B1) under 35 U.S.C. § 103(a).

**B. GROUND OF REJECTION (Claims 4, 20, and 36)**

Whether claims 4, 20, and 36 are unpatentable over Hoffberg, Palmer, and Kirsch and in further view of Jelbert (UK Patent Application GB 2 347 053 A) under 35 U.S.C. § 103(a).

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ARGUMENT

A. 35 U.S.C. § 103, Obviousness, (Claims 1, 3, 5, 6, 10, 11, 16, 17, 19, 21, 22, 26, 27, 32, 33, 35, 37, 38, 42, 43, and 48)

Claim 1 is representative of the claims in this group and reads as follows:

1. A method of identifying objectionable content, comprising:
  - receiving requested content for a requesting user;
  - retrieving a user profile for the requesting user, wherein the user profile includes parameters for identifying objectionable content and a plurality of thresholds including a threshold for each of a plurality of categories of objectionable content;
  - analyzing the requested content using the parameters stored in the user profile of the requesting user to identify an amount of objectionable content based on the parameters for each of the plurality of categories of objectionable content;
  - determining a score for the requested content for each of the plurality of categories of objectionable content based on the amount and category of objectionable content contained in the requested content; and
  - storing the requested content in an objectionable content data structure if a score for the requested content is above at least one threshold for at least one category of objectionable content.. (emphasis added)

Hoffberg, Palmer, and Kirsch, taken alone or in combination, fail to teach or suggest storing the requested content in an objectionable content data structure if a score for the requested content is above at least one threshold for at least one category of objectionable content.

Hoffberg teaches an intelligent electronic appliance. A media metadata processing system analyzes media content to understand the content and generate content-descriptive metadata. The Examiner acknowledges that Hoffberg does not teach storing the requested content in an objectionable content data structure if the amount of objectionable content in the requested content is above at least one predetermined threshold.

Palmer teaches automatic multivariate censorship of audio-video programming by user selectable obscuration. Using a viewer-selected censorship mode and multivariate censorship classification data encoded in the audio-video programming signal, a user's receiver is able to automatically censor audio-video programming. The Examiner does not rely on Palmer to teach

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storing the requested content in an objectionable content data structure if the amount of objectionable content in the requested content is above at least one predetermined threshold.

However, the Examiner alleges that Kirsch teaches this feature at column 7, lines 40-43, which reads as follows:

Conventional email-client applications can then further filter these UEM marked messages directly into a trash queue or specifically segregated into some "suspected UEM" inbound email queue that a user can later summarily review and clean as appropriate.

As can be seen from this section, Kirsch is directed to electronic mail filtering. Kirsch's system filters-out undesirable email messages sent to a user email address. The system includes a data store providing updateable storage of signature records that correspond to a subset of undesirable email messages that may be sent to the predetermined email address. In the section cited by the Examiner, Kirsch describes filtering undesirable email (UEM) either to a trash folder or other segregated email queue. However, Kirsch describes undesirable email as "spam" email or "spamming," which is the typically unsolicited mass emailings to open or unsubscribed email addresses. (See Kirsch, column 1, lines 34-55). Thus, Kirsch teaches a method of storing unsolicited emails.

In contradistinction, the present invention in claim 1 stores the requested content in an objectionable content data structure if a score for the requested content is above at least one threshold for at least one category of objectionable content. The Examiner bears the burden of establishing a *prima facie* case of obviousness based on the prior art when rejecting claims under 35 U.S.C. § 103. *In re Fritch*, 972 F.2d 1260, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992). Since none of the references teach or suggest this feature the Examiner has failed to establish a *prima facie* case of obviousness, because the Examiner does not show where each and every claim limitation is taught or fairly suggested by the applied prior art.

The Examiner responds to Appellants arguments, stating:

Hoffberg and Palmer both teach requesting content where the requested content is filtered, similarly to Kirsch. Kirsch teaches an email filtering system where a score is determined and if exceeding the score, the mail is sent to a specific queue to allow for later review (col. 7, lines 1-16 & 40-43). The content, whether unsolicited or requested in Hoffberg, Palmer and Kirsch, is subjected to user-requested filtering. Specifically, Kirsch teaches "A generally undesired use of email, hereinafter referred to as the delivery of undesired email (UEM) and

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loosely referred to as "spam" email or "spamming," is the typically unsolicited mass emailings to open or unsubscribed email addresses" (emphasis added). It should be noted that Kirsch teaches that "Any loss of non-UEM messages, however, is generally considered completely unacceptable by users" (col. 2, lines 46-47). Nowhere does Kirsch indicate that the UEM filter allowing a user to review and clean content would not be useful to a user requesting the content, but which is filtered for a different reason. Further, even though the user requests the content in Hoffberg and Palmer, the system subjects the content to filtering, just as Kirsch does. Therefore even if the content is requested, it is undesirable until it passes filtering. Further, and most importantly, one of ordinary skill would still find Kirsch's message queue useful in the systems of Hoffberg and Palmer as the queue would still serve its purpose — to allow a user to review and possibly clean the content. This would allow the user to review the content, avoiding the loss of filtered, but desired content.

Appellants respectfully submit that merely requesting content as in Hoffberg and Palmer is not equivalent to analyzing requested content to determine if a score for the requested content is above at least one threshold for at least one category of objectionable content and storing the requested content in an objectionable content data structure. This section also does not teach or suggest any modification needed to reach the analyzing step of claim 1. Furthermore, Kirsch describes filtering-out undesirable email messages sent to a user email address using a data store providing updateable storage of signature records that correspond to a subset of undesirable email messages that may be sent to the predetermined email address. In the system of Kirsch, once an email signature is identified as undesirable, all emails with the same signature are deemed undesirable and are sent to either to a trash folder or other segregated email queue. However, emails that are not on the updateable storage of signature records are compared only at the signature level to see if the signatures are within a predetermined tolerance to those signatures within the updateable storage of signature records. (See, Kirsch, column 7, lines 1-16).

Therefore, Appellants respectfully submit that a requested content email would not appear in the updateable storage of signature records and, since the email is requested, the email with or without objectionable content would not be filtered out by the Kirsch system since the content was requested by the user, as in claim 1. Thus, Kirsch does not teach or suggest storing the requested content in an objectionable content data structure if a score for the requested content is above at least one threshold for at least one category of objectionable content.

The applied references do not teach or suggest each and every claim limitation; therefore, Hoffberg, Palmer, and Kirsch, taken alone or in combination, do not render claim 1 obvious. Independent claims 17 and 33 recite subject matter addressed above with respect to claim 1 and are allowable for similar reasons. Since claims 3, 5, 6, 10, 11, 16, 19, 21, 22, 26, 27, 32, 35, 37, 38, 42, 43, and 48 depend from claims 1, 17, and 33, the same distinctions between Hoffberg, Palmer, and Kirsch and the invention recited in claims 1, 17, and 33 apply for these claims. Additionally, claims 3, 5, 6, 10, 11, 16, 19, 21, 22, 26, 27, 32, 35, 37, 38, 42, 43, and 48 recite other additional combinations of features not suggested by the references.

Furthermore, no suggestion is present in any of the references to modify the references to include such features. That is, there is no teaching or suggestion in Hoffberg, Palmer, or Kirsch that a problem exists for which storing the requested content in an objectionable content data structure if a score for the requested content is above at least one threshold for at least one category of objectionable content, is a solution. To the contrary, Hoffberg appears to teach analyzing content based on a user's likes and dislikes and Palmer appears to teach automatically censor audio-video programming, both of which do not include storing the requested content in an objectionable content data structure. Kirsch teaches storing unsolicited emails.

One of ordinary skill in the art, being presented only with Hoffberg, Palmer, and Kirsch, and without having a prior knowledge of Appellants' claimed invention, would not have found it obvious to combine and modify Hoffberg, Palmer, and Kirsch to arrive at Appellants' claimed invention, as recited in claim 1. To the contrary, even if one were somehow motivated to combine Hoffberg, Palmer, and Kirsch, and it were somehow possible to combine the systems, the result would not be the invention, as recited in claim 1. The resulting system would still fail to store requested content in an objectionable content data structure if a score for the requested content is above at least one threshold for at least one category of objectionable content.

In view of the above, Appellants respectfully submit that the Hoffberg, Palmer, and Kirsch, taken alone or in combination, fail to teach or suggest the features of claims 1, 17, and 33. At least by virtue of their dependency on claims 1, 17, and 33, the features of dependent claims 3, 5, 6, 10, 11, 16, 19, 21, 22, 26, 27, 32, 35, 37, 38, 42, 43, and 48 are not taught or suggested by Hoffberg, Palmer, and Kirsch, whether taken individually or in combination.

Accordingly, Appellants respectfully request the rejection of claims 1, 3, 5, 6, 10, 11, 16, 17, 19, 21, 22, 26, 27, 32, 33, 35, 37, 38, 42, 43, and 48 under 35 U.S.C. § 103 not be sustained.

**B. 35 U.S.C. § 103, Obviousness, (Claims 4, 20, and 36)**

For this ground of rejection, claims 4, 20, and 36 are dependent on independent claims 1, 17, and 33 and, thus, these claims distinguish over Hoffberg, Palmer, and Kirsch for at least the reasons noted above with regards to claims 1, 17, and 33. Moreover, Jelbert do not provide for the deficiencies of Hoffberg, Palmer, and Kirsch and, thus, any alleged combination of Hoffberg, Palmer, Kirsch, and Jelbert would not be sufficient to reject independent claims 1, 17, and 33 or claims 4, 20, and 36 by virtue of their dependency.

Moreover, neither Hoffberg, Palmer, Kirsch, nor Jelbert teaches or suggests the desirability of incorporating the subject matter of the other when these cited references are considered as a whole by one of ordinary skill in the art. That is, there is no motivation offered in either reference for the alleged combination. The Examiner alleges that the motivation for the combination is "to avoid major changes to a client or a server." As discussed above, Hoffberg, Palmer, and Kirsch fail to teach storing the requested content in an objectionable content data structure if a score for the requested content is above at least one threshold for at least one category of objectionable content. While Jelbert may teach a proxy server, Jelbert does not teach or suggest storing the requested content in an objectionable content data structure if a score for the requested content is above at least one threshold for at least one category of objectionable content. Thus, the only teaching or suggestion to even attempt the alleged combination is based on a prior knowledge of Appellants' claimed invention thereby constituting impermissible hindsight reconstruction using Appellants' own disclosure as a guide.

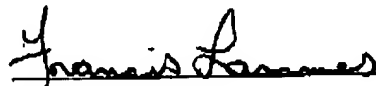
One of ordinary skill in the art, being presented only with Hoffberg, Palmer, Kirsch, and Jelbert, and without having a prior knowledge of Appellants' claimed invention, would not have found it obvious to combine and modify Hoffberg, Palmer, Kirsch, and Jelbert to arrive at Appellants' claimed invention. To the contrary, even if one were somehow motivated to combine Hoffberg, Palmer, Kirsch and Jelbert, and it were somehow possible to combine the two systems, the result would not be the invention, as recited in claims 1, 17, and 33. That is, the

resulting system still would not store the requested content in an objectionable content data structure if a score for the requested content is above at least one threshold for at least one category of objectionable content.

In view of the above, Hoffberg, Palmer, Kirsch, and Jelbert, taken either alone or in combination, fail to teach or suggest the specific features recited in independent claims 1, 17, and 33, from which claims 4, 20, and 36 depend. Accordingly, Appellants respectfully request the rejection of claims 4, 20, and 36 under 35 U.S.C. § 103 not be sustained.

### CONCLUSION

In view of the above, Appellants respectfully submit that claims 1, 3-6, 10, 11, 16, 17, 19-22, 26, 27, 32, 33, 35-38, 42, 43, and 48 are allowable over the cited prior art and that the application is in condition for allowance. Accordingly, Appellants respectfully request the Board of Patent Appeals and Interferences to reverse the rejections set forth in the Final Office Action.



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**CLAIMS APPENDIX**

The text of the claims involved in the appeal reads:

1. A method of identifying objectionable content, comprising:  
receiving requested content;  
retrieving a user profile for a requesting user, wherein the user profile includes parameters for identifying objectionable content and a plurality of thresholds including a threshold for each of a plurality of categories of objectionable content;  
analyzing the requested content using the parameters stored in the user profile of the requesting user to identify an amount of objectionable content based on the parameters for each of the plurality of categories of objectionable content;  
determining a score for the requested content for each of the plurality of categories of objectionable content based on the amount and category of objectionable content contained in the requested content; and  
storing the requested content in an objectionable content data structure if a score for the requested content is above at least one threshold for at least one category of objectionable content.
3. The method of claim 1, further comprising:  
providing at least one entry from the objectionable content data structure to a user;  
receiving input from the user categorizing the at least one entry as objectionable or non-objectionable; and



adjusting at least one predetermined threshold within the plurality of thresholds if the input from the user categorizes the at least one entry as non-objectionable.

4. The method of claim 1, wherein the method is implemented in a proxy server.
5. The method of claim 1, wherein the method is implemented in a client device.
6. The method of claim 1, wherein analyzing the requested content to identify an amount of objectionable content includes one or more of performing image analysis, performing list based analysis, performing textual analysis, or receiving an input from a user designating the requested content as containing objectionable content.
10. The method of claim 1, wherein the plurality of thresholds are dynamically adjustable.
11. The method of claim 1, wherein the plurality of thresholds are dynamically adjustable based on results of review, by a user, of objectionable content in the objectionable content data structure.
16. The method of claim 3, wherein adjusting the at least one predetermined threshold if the input from the user categorizes the at least one entry as non-objectionable includes determining a new value for the at least one predetermined threshold using one of an algorithm, a function, an inference engine, a neural network, an expert system, or an intelligent computing system.

17. An apparatus for identifying objectionable content, comprising:
- a first interface which receives requested content;
  - a user profile for a requesting user, wherein the user profile stores parameters for identifying objectionable content and a plurality of thresholds including a threshold for each of a plurality of categories of objectionable content;
  - a processor which analyzes the requested content using the parameters stored in the user profile of the requesting user to identify an amount of objectionable content based on the parameters for each of the plurality of categories of objectionable content and determines a score for the requested content for each of the plurality of categories of objectionable content based on the amount and category of objectionable content contained in the requested content; and
  - a storage device which stores the requested content in an objectionable content data structure if a score for the requested content is above at least one threshold for at least one category of objectionable content.
19. The apparatus of claim 17, further comprising:
- a second interface which provides at least one entry from the objectionable content data structure to a client device; and
  - a third interface which receives input from a user categorizing the at least one entry as objectionable or non-objectionable, wherein the processor adjusts at least one predetermined threshold within the plurality of thresholds if the input from the user categorizes the at least one entry as non-objectionable.
20. The apparatus of claim 17, wherein the apparatus is a proxy server.

21. The apparatus of claim 17, wherein the apparatus is a client device.
22. The apparatus of claim 17, wherein the processor performs one or more of image analysis, list based analysis, or textual analysis to identify an amount of objectionable content.
26. The apparatus of claim 17, wherein the plurality of thresholds are dynamically adjustable.
27. The apparatus of claim 17, wherein the plurality of thresholds are dynamically adjustable based on results of review, by a user, of objectionable content in the objectionable content data structure.
32. The apparatus of claim 19, wherein the processor determines a new value for the at least one predetermined threshold using one of an algorithm, a function, an inference engine, a neural network, an expert system, or an intelligent computing system.
33. A computer program product in a computer readable medium for identifying objectionable content, comprising:
- instructions for receiving requested content;
  - instructions for retrieving a user profile for a requesting user, wherein the user profile includes parameters for identifying objectionable content and a plurality of thresholds including a threshold for each of a plurality of categories of objectionable content;

instructions for analyzing the requested content using parameters stored in a user profile of the requesting user to identify an amount of objectionable content based on the parameters for each of the plurality of categories of objectionable content;

instructions for determining a score for the requesting content for each of the plurality of categories of objectionable content based on the amount and category of objectionable content contained in the requested content; and

instructions for storing the requested content if a score for the requested content is above at least one threshold for at least one category of objectionable content.

35. The computer program product of claim 33, further comprising:

instructions for providing at least one entry from the objectionable content data structure to a user;

instructions for receiving input from the user categorizing the at least one entry as objectionable or non-objectionable; and

instructions for adjusting at least one predetermined threshold within the plurality of thresholds if the input from the user categorizes the at least one entry as non-objectionable.

36. The computer program product of claim 33, wherein the computer program product is executed in a proxy server.

37. The computer program product of claim 33, wherein the computer program product is executed in a client device.

38. The computer program product of claim 33, wherein the instructions for analyzing the requested content to identify an amount of objectionable content includes instructions for performing one or more of image analysis, list based analysis, or textual analysis.

42. The computer program product of claim 33, wherein the plurality of thresholds are dynamically adjustable.

43. The computer program product of claim 33, wherein the plurality of thresholds are dynamically adjustable based on results of review, by a user, of stored objectionable content.

48. The computer program product of claim 35, wherein the instructions for adjusting the at least one predetermined threshold if the input from the user categorizes the at least one entry as non-objectionable includes instructions for determining a new value for the at least one predetermined threshold using one of an algorithm, a function, an inference engine, a neural network, an expert system, or an intelligent computing system.

**EVIDENCE APPENDIX**

There is no evidence to be presented.

**RELATED PROCEEDINGS APPENDIX**

There are no related proceedings.

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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Bantz et al.

Serial No.: 09/788,071

Filed: February 16, 2001

For: Apparatus and Methods for  
Active Avoidance of Objectionable  
Content§  
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Group Art Unit: 2134

Examiner: Michael J. Simltoski

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- Appeal Brief (37 C.F.R. 41.37)

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